

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,

v.

**8:15-cr-228
(GLS)**

OLIVER LEPINSKY,

Defendant.

SUMMARY ORDER

On August 12, 2015, a grand jury returned an indictment for defendant Oliver Lepinsky on one count of conspiracy to commit mail and wire fraud, in violation of 18 U.S.C. § 1349. (Dkt. No. 1 at 1, 2, 5, 8.) The charge stems from Lepinsky's alleged involvement in a false billing scheme that coerced schools, churches, and businesses to pay for online advertising services that they had not ordered. (*Id.* ¶ 5.) Specifically, the government alleges that Lepinsky acted as a courier by picking up mail, including checks, at mail-forwarding businesses on the U.S.-Canadian border and delivered false bills that were mailed to victims. (*Id.* ¶ 12.)

On January 16, 2018, Department of Homeland Security law enforcement agents (hereinafter "Special Agents") arrested Lepinsky at the

Champlain, New York port of entry. (Dkt. No. 30, Attach. 1 at 1.)¹

Subsequent to his arrest, Special Agents Brad Parish and Ed Quackenbush interrogated Lepinsky after administering *Miranda*² warnings and obtaining his waiver of those rights. (*Id.* at 1, 3-4.) Thereafter, Lepinsky was lodged at Clinton County Jail until his initial appearance. (*Id.* at 1.)

Approximately thirty-six hours later, on January 18, 2018, Special Agents Parish and Steve Prenoveau transported Lepinsky from Clinton County Jail to the federal courthouse in Plattsburgh. (*Id.* at 2.) While en route,³ Special Agent Prenoveau turned around and asked Lepinsky how he was doing. (*Id.*) After answering, Lepinsky stated that he recognized Prenoveau and had spoken with him in the past. (*Id.*) Prenoveau asked Lepinsky if he was a mail courier when they previously talked because he

¹ The facts are drawn from Lepinsky's motion to suppress, (Dkt. No. 30, Attach. 1 at 1-2), and the court's citations to it omit internal citations unless otherwise noted. The government does not dispute the facts as set forth by Lepinsky. (Dkt. No. 36 at 1.)

² *Miranda v. Arizona*, 384 U.S. 436 (1966).

³ The trip took approximately five to eight minutes. (Dkt. No. 36, Attach. 1 ¶ 3.)

did not remember meeting him before. (Dkt. No. 36, Attach. 1 ¶ 3.⁴)

Lepinsky answered that he worked as a courier, and, if he had known that what he was doing was illegal, then he would have stopped long ago. (Dkt. No. 30, Attach. 1 at 2.) Prenoveau then told Lepinsky that if he did in fact speak with him, then Prenoveau most likely told him that what he was doing may cause him to get into trouble. (*Id.*) Lepinsky then responded that he should have listened to Prenoveau's advice. (*Id.*)

The entire conversation took approximately two to three minutes, (Dkt. No. 36, Attach. 1 ¶ 3), and no other communication took place about Lepinsky's involvement, (Dkt. No. 30, Attach. 1 at 2). He was then presented to the court for his initial appearance, detained pending a detention hearing, and appointed counsel. (*Id.*)

Pending is Lepinsky's motion to suppress the statements that he made on January 18, 2018. (Dkt. No. 30.) He argues that (1) the statements were elicited in violation of *Miranda*, (*id.*, Attach. 1 at 3-4), and

⁴ In reciting the facts, Lepinsky purportedly quotes Special Agent Prenoveau's memorialization of the relevant events. (Dkt. No. 30, Attach. 1 at 2.) However, as that memorialization has not been filed, the court relies on Prenoveau's affidavit, which was filed by the government, to supplement Lepinsky's facts. (Dkt. No. 36, Attach. 1.) It should be noted that Prenoveau's affidavit and Lepinsky's quotation do not conflict. (*Compare id.*, with Dkt. No. 30, Attach. 1 at 2.)

(2) in violation of his Sixth Amendment right to counsel, (*id.* at 4-5). These arguments fail.

First, for the reasons set forth by the government, the court agrees that, given the totality of the circumstances, Special Agent Prenoveau's conversation with Lepinsky was not an interrogation and thus did not trigger the need for *Miranda* warnings or the Sixth Amendment right to counsel. (Dkt. No. 36 at 2-5.) That is, Special Agent Prenoveau merely initiated polite conversation; asked questions and made statements that were not reasonably likely to elicit an incriminating response; and, after Lepinsky stated that he should have listened to Prenoveau's advice, stopped talking with Lepinsky. (*Id.* at 4-5 and cases cited therein.)

Second, the court also agrees with the government that, even if the conversation amounted to an interrogation, Lepinsky's earlier waiver of his *Miranda* rights was still in effect. (*Id.* at 5-7.)⁵ Lepinsky does not dispute that he was given *Miranda* warnings thirty-six hours prior to the

⁵ “[T]he Sixth Amendment right to counsel may be waived by a defendant . . . [a]nd when a defendant is read his *Miranda* rights (which include the right to have counsel present during interrogation) and agrees to waive those rights, that typically does the trick, even though *Miranda* rights purportedly have their source in the *Fifth* Amendment[.]” *Montejo v. Louisiana*, 556 U.S. 778, 786 (2009) (internal citations omitted).

conversation in question⁶; Special Agent Parish was present for both Lepinsky's waiver of his *Miranda* rights and his conversation with Special Agent Prenoveau, (Dkt. No. 30, Attach. 1 at 1, 2); and Lepinsky does not claim that he somehow forgot his *Miranda* rights in thirty-six hours or that he was in a coercive environment, (Dkt. No. 36 at 7).⁷

Finally, the court agrees with the government that a hearing is not necessary. (*Id.* at 7.) Lepinsky did not request a hearing, and he did not meet his burden of production. See *United States v. Miller*, 382 F. Supp. 2d 350, 361 (N.D.N.Y. 2005); N.D.N.Y. L.R. Cr. P. 12.1(e).

Accordingly, it is hereby

ORDERED that defendant's motion to suppress (Dkt. No. 30) is **DENIED**; and it is further

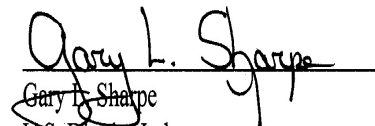
ORDERED that the Clerk provide a copy of this Summary Order to the parties.

⁶ Although Lepinsky specifies that he was "allegedly" administered *Miranda* warnings and waived them, (Dkt. No. 30, Attach. 1 at 1), he sets forth no facts to the contrary. In fact, elsewhere in his motion he references "the warnings given in connection with his arrest and interrogation . . . on January 16, 2018." (*Id.* at 3-4.)

⁷ Moreover, the cases cited by Lepinsky to argue that the *Miranda* warnings given to him had gone stale are from outside the Second Circuit and do not persuade the court here. (Dkt. No. 30, Attach. 1 at 4),

IT IS SO ORDERED.

April 26, 2019
Albany, New York



Gary L. Sharpe
U.S. District Judge